

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SALVADOR RICO-RIVAS,

Petitioner,

Case No. 3:23-cv-00288-MMD-CLB

ORDER

v.

NETHANJAH BREITENBACH, *et al.*,

Respondents.

Salvador Rico-Rivas submitted a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and has now paid the filing fee. (ECF Nos. 1-1, 6.) The Court has reviewed the petition pursuant to Habeas Rule 4 and directs that it be served on Respondents.

A petition for federal habeas corpus should include all claims for relief of which Petitioner is aware. If Petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If Petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Rico-Rivas has also submitted a motion for appointment of counsel. (ECF No. 1-2.) There is no constitutional right to appointed counsel in a federal habeas corpus proceeding. *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v. Florida*, 549 U.S. 327, 336-37 (2007)). An indigent petitioner may request appointed counsel to pursue habeas relief. 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint counsel is generally discretionary. *Id.* at § 3006A(a)(2) (authorizing appointment of counsel “when the interests of justice so require”). However, counsel is appropriate if the complexities of the case are such that denial of counsel would amount to a denial of due process, and

1 where the petitioner is so uneducated that he is incapable of fairly presenting his claims.
 2 *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987); *Brown v. United States*, 623 F.2d
 3 54, 61 (9th Cir. 1980). Here, a jury convicted Rico-Rivas of first-degree murder, and he is
 4 serving a sentence of 28 years to life in prison. While his petition appears to set forth the
 5 claims he seeks to raise reasonably clearly, some of the legal issues may be complex. In
 6 order to ensure due process, the Court grants the motion.

7 Rico-Rivas has also filed what he styles as a motion for stay pending exhaustion.
 8 (ECF No. 3.) But this filing contains no argument or explanation as to why the Court
 9 should stay this case. The Court denies the wholly unsupported motion.¹

10 It is therefore ordered that the Clerk of Court detach, file, and electronically serve
 11 the petition (ECF No. 1-1) on Respondents.

12 It is further ordered that that the Clerk add Aaron D. Ford, Nevada Attorney
 13 General, as counsel for Respondents and provide Respondents an electronic copy of all
 14 items previously filed in this case by regenerating the Notice of Electronic Filing to the
 15 Office of the Attorney General only.

16 It is further ordered that the Clerk detach and file Petitioner's motion for counsel
 17 (ECF No. 1-2).

18 It is further ordered that the motion for counsel is granted.

19 It is further ordered that the Federal Public Defender for the District of Nevada
 20 (FPD) is appointed to represent Petitioner.

21 It is further ordered that the Clerk electronically serve the FPD a copy of this order,
 22 together with a copy of the petition for writ of habeas corpus. (ECF No. 1-1.) The FPD
 23 has 30 days from the date of entry of this order to file a notice of appearance or to indicate
 24 to the Court its inability to represent Petitioner in these proceedings.

25 It is further ordered that after counsel has appeared for Petitioner in this case, the
 26 Court will issue a scheduling order, which will, among other things, set a deadline for

27 ¹ The Court notes that it appears that Rico-Rivas' state postconviction proceedings have
 28 recently concluded, so it does not appear that there are claims pending in state court. (ECF No.
 1-1 at 70-78.)

1 the filing of an amended petition.

2 It is further ordered that Petitioner's motion for stay (ECF No. 3) is denied.

3 DATED THIS 26th day of September 2023.

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7 MIRANDA M. DU
8 CHIEF UNITED STATES DISTRICT JUDGE

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